

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

2014 JUL 23 P 2:47

BRETT KIMBERLIN,
Plaintiff,

v.

No. 8-13 CV 02580 RWT *Ke*

LYNN THOMAS, et al,
Defendants.

**PLAINTIFF'S REPLY TO DEFENDANTS' OPPOSITION TO MOTION FOR DEFAULT
AND MOTION TO STRIKE AND IMPOSE SANCTIONS FOR MAKING FALSE
STATEMENTS TO THE COURT**

Now comes Plaintiff Brett Kimberlin and replies to Defendants' Response in Opposition to Motion for Default. Plaintiff also moves to strike the document and for the Court to impose sanctions for making false statements and representations to the Court. Finally, he asks the Court to find that the Defendants have been served.

1. Defendants entire argument is based around their claim that Plaintiff submitted forged documents to the Court—specifically, that Plaintiff did not send the Complaint and Summons to Defendants Thomas and Malone “restricted” delivery as required by Maryland Rules. They not only assert that Plaintiff forged the documents but that he committed perjury by stating under oath that he sent the documents restricted delivery. They make a convoluted argument to support their claim based on their amateur sleuthing on the US Postal Service tracking website.
2. Fortunately, Plaintiff has had a lot of experience with the Defendants in this case and others making false allegations against him. Therefore, Plaintiff took the extra step of protecting himself this time by using his iPhone to take pictures of the envelopes sent to Defendants Thomas and Malone prior to

them being mailed. Those photos, four of which are attached, clearly show that the restricted box is checked in the exact same manner as Plaintiff's exhibit in the Motion for Default. The photos also show the certified receipt still attached to the envelopes. See Exhibit A 1-4.

3. The Defendants made this false allegation not only to mislead the Court but to give the document to two of their co-defendants in a case before Judge Hazel so they could publish blog posts and tweets stating that Plaintiff filed forged documents filed with this Court. Kimberlin v. NBC, GLH 13-3059. And of course, that is what happened.
4. One of those co-defendants, Aaron Walker tweeted, "BREAKING: Brett Kimberlin forges another document," <https://twitter.com/WaraiOtoko42/status/491607389666557953>, which links to a blog post by co-defendant William Hoge which falsely accused Plaintiff of forgery. Walker then posted an article on his blog, which falsely states that Plaintiff forged documents filed in this case. <http://allergic2bull.blogspot.com/2014/07/in-convicted-document-forgery-brett.html#more> Walker linked to a blog post by Hoge that also states falsely that Plaintiff filed a forged document and committed perjury. <http://hogewash.com/2014/07/21/team-kimberlin-post-of-the-day-508/>
5. Plaintiff filed a request today with Judge Hazel asking for a hearing on this blatant violation of the Management Order issued in GLH 13-3059 which prohibits Walker and Hoge from "impertinent, scandalous and ad hominem

attacks on any party, any Judge, or employee of this or any court, or any other person.”

6. Now that Defendants Thomas and Malone have filed a pleading in this case, it appears that they have accepted service of the Complaint. Judge Grimm found in Plaintiff's other case that one of the defendants waived service by responding to the Complaint: “And it seems that, to the extent service has not been effected as to Twitchy, Twitchy essentially has waived service and elected to move forward with a motion to dismiss, notwithstanding that it continues to identify itself as a ‘non-party.’” ECF 88, GLH 13-3059.
7. Similarly, Judge Hazel found with regard to still another defendant in that case that proof of notice is what is required for service:

“[T]he real purpose of service of process is to give notice to the defendant that he is answerable to the claim of the plaintiff.” *Karlsson v. Rabinowitz*, 318 F.2d 666, 669 (4th Cir.1963). Here, there can be no serious question that Ace of Spades is keenly aware of the instant lawsuit that has been filed against it. See e.g., ECF No. 75-1; ECF No. 75-1, Exhibit A. Indeed, Ace of Spades has retained counsel for its defense in this proceeding – Mr. Paul Levy. See ECF Case 8:13-cv-03059-GJH Document 162 Filed 07/18/14 Page 1 of 4 No. 75-1 ¶ 3 (Affidavit of Mr. Levy) (“After Ace of Spades contacted me for assistance in opposing Kimberlin’s motion for leave to take discovery, I spoke to Kimberlin about his motion.”). Since that time, Mr. Levy has entered an appearance on behalf of Ace of Spades (see ECF No. 76) and has made several filings on the Court’s docket (see ECF Nos. 75, 94, 106, 159).

Yet, despite having actual notice of Plaintiff’s lawsuit and having itself contributed to the deluge of filings on the Court’s docket, Ace of Spades is now attempting to hide behind a thinly cloaked veil of anonymity to avoid facing this lawsuit. It should go without saying, of course, that “[s]ervice of process obviously is not something that should be abused by a defendant to evade a lawsuit.” *Leach v. BB & T Corp.*, 232 F.R.D. 545, 551 (N.D.W. Va. 2005).” ECF 162, GLH 13-3059.

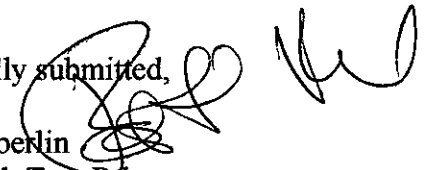
8. To drive home the fact of notice to Defendants, Plaintiff notes that on Saturday, July 19, 2014, Plaintiff arrived home to find a business card on his door from an

attorney named John Lowe, 5920 Searl Terr. Bethesda, MD. On the back of the card was handwritten, "Please phone me about a legal matter, John Lowe."

Plaintiff called him that evening and Mr. Lowe advised Plaintiff that he was calling on behalf of Lynn Thomas and wanted to chat the following day to make an offer to "make this case go away." The following day, Mr. Lowe called at 2pm and said that he intended to represent Defendants Thomas and Malone and was simply waiting for a signed retainer agreement as required by Virginia law. He said he would call back once he had that agreement in hand to "make an offer."

Wherefore, Plaintiff moves this Court to strike the false and malicious pleading filed by Defendants, deny their requested relief, impose sanctions for making false claims to the Court, and find that the Defendants have been served.

Respectfully submitted,


Brett Kimberlin
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CERTIFICATE OF SERVICE

I certify that I mailed a copy of this motion to Defendants Thomas and Malone at 704 Viewpointe Rd, St Charles, IL this 24th day of July 2014.

